

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition of La Plata County, Colorado)	MB Docket Nos. 12-1, 16-367
)	and 16-366
For Modification of the Television Markets of)	
Stations KDVR (FOX) and KCNC (CBS))	
)	

OPPOSITION TO PETITIONS FOR SPECIAL RELIEF¹

The Commission rejects market modification requests that fail to include seven categories of specific evidence to demonstrate the merits of such a change. Here, the Petitions lack any evidence for four of the seven categories of evidence, and the Commission should act swiftly to dismiss them.

Even if the Commission were to consider the merits of the Petitions, which it plainly should not, the five statutory factors codified by STELAR weigh against modifying the markets of the Denver Stations to include La Plata County for purposes of DISH Network and DIRECTV. Stripped bare, the Petitions rest on a single point: though “several hundred miles” away, the Denver stations are located in the same state as La Plata County. Support in the Petitions for the other statutory factors is either superficial or entirely absent. The FCC made

¹ LIN of New Mexico, LLC and LIN of Colorado, LLC (together “LIN”) hereby submit this Opposition to the Petitions for Special Relief filed by La Plata County, Colorado (the “Petitioner”) for modification of the television markets of Stations KDVR (FOX) and KCNC (CBS) (together, the “Denver Stations”). *See* Petition for Special Relief of La Plata County, Colorado for KDVR (FOX), Oct. 28, 2016, MB Docket Nos. 12-1, 16-366 (“KDVR Petition”) and Petition for Special Relief of La Plata County, Colorado for KCNC (CBS), Oct. 28, 2016, MB Docket Nos. 12-1, 16-367 (“KCNC Petition,” and together with the KDVR Petition, the “Petitions”).

clear that “the in-state factor does not serve as a trump card negating the other four statutory factors.”² Therefore, even if the Petitions are considered, the Commission should reject them.

The five-factor test becomes even more lopsided when you consider that LIN, the Albuquerque-Santa Fe DMA licensees of CBS affiliates KREZ-TV (licensed to Durango, CO), KRQE, and KBIM-TV as well as FOX affiliates KREZ-LD (licensed to Durango, CO) and KASA-TV, has been providing the residents of La Plata County, Colorado with extensive coverage of local news, sports, and weather for decades. For example, LIN newscasts carried live coverage of Vice President-elect Mike Pence’s campaign stop in Durango.³ LIN has provided in-depth and continuing coverage of the investigation into the tragic death of 13-year-old La Plata County-native Dylan Redwine.⁴ LIN had live shots and numerous stories from Durango covering the death of Durango-native Jeff Kuss, a Blue Angel pilot who died during an event.⁵ Each half-hour newscast contains weather forecasts for Durango. And in addition to carrying every Denver Broncos game airing on FOX or CBS in 2015 and 2016, LIN provided live shots and a package about the Denver Broncos Super Bowl celebration in Durango.⁶

In sum, the Petitions provide no evidence of historic carriage of the Denver Stations within La Plata County (Statutory Factor 1), no evidence that the Denver Stations have over-the-air coverage in La Plata County (Statutory Factor 2), no evidence that the Denver Stations provide any local coverage of events in La Plata County (Statutory Factor 3), and no evidence of

² *Amendment to the Commission’s Rules Concerning Market Modification*, FCC 15-111, para. 18 (Sept. 2, 2015) (“*STELAR Market Mod Order*”).

³ See KRQE.com, *VP candidate Mike Pence hosts rally in Durango* (Oct. 19, 2016), available at <http://krqe.com/2016/10/19/vp-candidate-mike-pence-hosts-rally-in-durango/>.

⁴ See, e.g., KRQE.com, *Investigators search for new evidence in Dylan Redwine’s death* (July 6, 2016), available at <http://krqe.com/2016/07/06/new-evidence-search-to-be-conducted-in-death-of-dylan-redwine/>

⁵ See, e.g., KRQE.com, *Hundreds gather to remember fallen Blue Angels pilot* (June 11, 2016), available at <http://krqe.com/2016/06/11/hundreds-gather-to-remember-fallen-blue-angels-pilot/>

⁶ See Van Tate, KRQE.com, *Broncos Mile High Salute starts in Durango* (Apr. 22, 2016), available at <http://krqe.com/2016/04/22/broncos-mile-high-salute-starts-in-durango/>

household viewing patterns in La Plata County (Statutory Factor 5). By contrast, the contours of Colorado stations KREZ-TV and KREZ-LD encompass La Plata County (Statutory Factor 2) and provide in-depth news, sports, and weather coverage of La Plata County (Statutory Factors 3 and 4). The Petitions' lack of evidence dooms them both procedurally and substantively, and the Commission should act promptly to dismiss them.

I. THE PETITIONS' FAILURE TO PROVIDE SPECIFIC EVIDENCE WARRANTS COMMISSION DISMISSAL

Market modification requests must include seven categories of specific evidence. The Petitions openly acknowledge that they do not include three categories and flat-out ignore a fourth. As a result, the Commission has no choice but to dismiss the Petitions.

The Commission made clear in the *STELAR Modification Order* “that satellite market modification requests that do not include the required evidence [will] be dismissed without prejudice. . . .”⁷ And while the Order provided standing for county governments to file petitions for special relief, the FCC did not relax the evidentiary prerequisites for these petitioners. Specifically, the agency “strongly encourage[d] county government petitioners” to enlist necessary help in filing complete petitions “[t]o avoid dismissal based on a failure to meet our specific evidentiary requirements.”⁸

The Petitioner did not heed the Commission's advice. Rather than providing required “data on shopping and labor patterns in the local market,”⁹ the Petitions protest that “such data should not impact” the Commission's decision.¹⁰ Instead of including “[c]able system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings,”¹¹ the Petitions bluntly state that “no evidence is being submitted for

⁷ *STELAR Market Mod Order*, para. 22.

⁸ *STELAR Market Mod Order*, para. 15.

⁹ *STELAR Market Mod Order*, para. 20.

¹⁰ Petitions, at 6.

¹¹ *STELAR Market Mod Order*, para. 20.

this element.”¹² Though Commission rules require “[p]ublished audience data for the relevant station[s],”¹³ the Petitioner avers that such “data would not be helpful in evaluating” the Petitions.¹⁴ Finally, the Petitions overlook the requirement to provide detailed noise-limited service contour maps, including the “satellite carrier local receive facilities.”¹⁵

Moreover, the Petitions’ requests for waiver of these missing elements are unsupported by evidence beyond repeating that the Denver Stations, though “approximately 7 hours by car away,” are in the same state as La Plata County. Not only does this showing fall well short of the Commission’s general Rule 1.3 waiver standard,¹⁶ grant of such waiver would eviscerate the Commission’s repeated requirement for specific evidence in market modification petitions.

In short, the Commission has no choice but to dismiss the Petitions.

II. EVIDENCE THAT LIN’S LA PLATA COUNTY-BASED STATIONS PROVIDE THE AREA WITH EXTENSIVE LOCAL NEWS, WEATHER AND SPORTS COVERAGE SIGNIFICANTLY OUTWEIGHS THE PAUCITY OF EVIDENCE IN THE PETITIONS AND SUPPORTS DENIAL OF THE MARKET MODIFICATION REQUESTS

For the sake of argument, if the Commission were to examine the merits of the Petitions, the evidence provided in support of a market modification for the Denver Stations falls well short of satisfying the STELAR statutory test.

STELAR provides a five-factor test for market modifications.¹⁷ The Petitions base their entire argument on one of those elements -- the bare fact that the Denver Stations and La Plata County are both in Colorado -- and disregard the other four. In doing so, the Petitions misread the intent of Congress. “[A] legislature says in a statute what it means and means in a statute

¹² Petitions, at 6.

¹³ *STELAR Market Mod Order*, para. 20.

¹⁴ Petitions, at 6.

¹⁵ *STELAR Market Mod Order*, para. 20.

¹⁶ 47 C.F.R. § 1.3.

¹⁷ 47 U.S.C. § 338(l)(2)(B)(i)-(v).

what it says there.”¹⁸ To state the obvious, by codifying a five-factor test, Congress intended for the FCC to account for all five factors. The Petitions are devoid of any evidence of historic carriage, over-the-air coverage, local coverage specific to La Plata County, and household viewing patterns and should be summarily rejected.

In addition, under the *STELAR Modification Order*, the weight given to the so-called in-state factor is minimized because the Petitioner cannot show that La Plata County residents “had little (or no) access” to programming specifically related to La Plata County.¹⁹ To be clear, the Petitions provide no evidence that the Denver Stations have “aired programming, such as news, politics, sports, weather and other emergency information, specifically targeted to the community at issue.”²⁰ By contrast, LIN is the licensee of a CBS and FOX affiliate licensed to the city of Durango, Colorado, and, these stations take seriously their mission to provide La Plata County with in-depth coverage of local news, weather, and sports, including the following examples:

The explosion at the Gold King Mine, located north of Durango²¹

- [Gov. Martinez presses EPA, Colorado to pay up for mine spill damages](#)
- [New Mexico to sue EPA over mine spill](#)
- [Runoff may cause Gold King Mine metals, lead to surge in Animas River](#)

A school bus accident in Durango²²

- [Crash probe: Bus driver reached for whistle just before crash](#)
- [School bus rollover sends 10 students to hospital](#)

¹⁸ *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations omitted).

¹⁹ *STELAR Market Mod Order*, para. 18.

²⁰ *STELAR Market Mod Order*, para. 18 n.85.

²¹ Available at <http://krqe.com/2016/08/04/gov-martinez-presses-epa-colorado-to-pay-up-for-mine-spill-damages/>, <http://krqe.com/2016/01/14/new-mexico-to-sue-epa-over-mine-spill/>, <http://krqe.com/2016/03/14/runoff-may-cause-gold-king-mine-metals-lead-to-surge-animas-river/>.

²² Available at <http://krqe.com/2015/11/19/crash-probe-bus-driver-reached-for-whistle-just-before-crash/>, <http://krqe.com/2015/11/17/school-bus-rollover-sends-10-students-to-hospital/>

The tragic death of Durango-native Jeff Kuss²³

- [Hundreds gather to remember fallen Blue Angels pilot](#)
- [Candlelight vigil held for Blue Angels captain that died in crash](#)
- [Blue Angels pilot killed; no civilians hurt](#)

Coverage of La Plata County railways²⁴

- [Poll names New Mexico railroad best in nation](#)
- [Durango, Chama compete in 'Best Train Rides in America' contest](#)

Continuing Coverage of the investigation of Durango-native Dylan Redwine's death²⁵

- [Investigators search for new evidence in Dylan Redwine's death](#)
- [Dylan Redwine's dad "disappointed" wrongful death lawsuit dismissed](#)
- [Mother speaks on Dylan Redwine's father named as person of interest](#)

Other Stories of Local Interest to La Plata County²⁶

- [16 businesses affected after massive fire in Pagosa Springs](#)
- [Ballot selfies could land you in jail in Colorado](#)
- [Durango hosts first Animas Valley Balloon Rally](#)
- [Killer comets make math fun](#)
- [Durango police search for suspect in carjacking](#)
- [Broncos Mile High Salute starts in Durango](#)
- [Charges filed against mother in crash killing 8-year-old](#)
- [Researchers work with black bears in Colorado](#)
- [Durango-based "Grassburger" opens in northeast Albuquerque](#)

²³ Available at <http://krqe.com/2016/06/11/hundreds-gather-to-remember-fallen-blue-angels-pilot/>, <http://krqe.com/2016/06/09/candlelight-vigil-held-for-blue-angels-captain-that-died-in-crash/>, <http://krqe.com/2016/06/02/blue-angels-pilot-killed-no-civilians-hurt/>

²⁴ Available at <http://krqe.com/2016/09/04/poll-names-new-mexico-railroad-best-in-nation/>, <http://krqe.com/2016/07/01/durango-chama-compete-in-best-train-rides-in-america-contest/>.

²⁵ Available at <http://krqe.com/2016/07/06/new-evidence-search-to-be-conducted-in-death-of-dylan-redwine/>, <http://krqe.com/2016/02/16/wrongful-death-suit-against-dylan-redwines-dad-dismissed/>, <http://krqe.com/2015/08/19/dylan-redwines-death-ruled-homicide-father-named-as-person-of-interest/>.

²⁶ Available at <http://krqe.com/2016/10/27/16-businesses-affected-after-massive-fire-in-pagosa-springs/>, <http://krqe.com/2016/10/24/ballot-selfies-could-land-you-in-jail-in-colorado/>, <http://krqe.com/2016/10/16/durango-holds-first-animas-valley-balloon-rally/>, <http://krqe.com/2016/08/05/killer-comets-make-math-fun/>, <http://krqe.com/2016/06/16/durango-police-search-for-suspect-in-carjacking/>, <http://krqe.com/2016/04/22/broncos-mile-high-salute-starts-in-durango/>, <http://krqe.com/2016/04/20/charges-filed-against-mother-in-crash-killing-8-year-old/>, <http://krqe.com/2016/03/18/researchers-work-with-black-bears-in-colorado/>, <http://krqe.com/2016/03/18/durango-based-grassburger-opens-in-northeast-albuquerque/>, <http://krqe.com/2016/02/18/durango-athletes-suspended-after-urinating-in-opposing-teams-water-fountain/>.

- [Durango athletes suspended after urinating in opposing team's water fountain](#)

Much of this local coverage is possible because while Albuquerque may not be in the same state as La Plata County, it is three hours closer than Denver. LIN is also a member of the Durango Chamber of Commerce, provides La Plata-area businesses the opportunity for affordable, locally-produced ads to air on television, and supports a local, publicly-accessible office. Further, during the 2014-16 seasons, the LIN stations have aired every regular-season Denver Broncos game on CBS and FOX.

The Petitions do not come close to carrying their evidentiary burden, and the Commission should act quickly to reject them.

III. CONCLUSION

The Petitions' failure to meet the Commission's evidentiary requirements warrants prompt dismissal. Even if the agency did consider the Petitions on the merits of the Petitions, STELAR's five-factor test weighs heavily in favor of rejecting the market modification request.

Respectfully submitted,

LIN of New Mexico, LLC
LIN of Colorado, LLC

By: _____/s/_____
Andrew C. Carington, Vice President,
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New Mexico, LLC and LIN of Colorado,
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Dated: November 22, 2016

CERTIFICATE OF SERVICE

I, Lisa Manning, do hereby certify that on November 22, 2016, I caused copies of the foregoing Opposition to Petitions for Special Relief to be delivered to the following via U.S. First Class mail:

Bradford P. Blake, Chair
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Ms. Alison A. Minea
Director & Senior Counsel, Regulatory Affairs
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KASY-TV/KRWB-TV/KWBQ
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DIRECTV, LLC
Local-into Local Market Modification
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KDVR
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KCHF
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KENW
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Portales, NM 88130

KKNJ-LP
200 S. Alto Mesa Dr
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KLUZ-TV, KTFA-LP, KTFQ-DT
2725-F Broadbent Pkwy NE
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KRMU
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KRTN-TV
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KUSA
500 Speer Blvd
Denver, CO 80203

KYNM
5010 4th Street NW
Albuquerque, NM 87107

KCNC
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Denver, CO 80203

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P.O. Box 3757
Lubbock, TX 79423

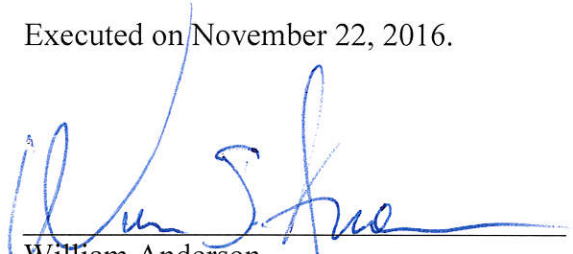
KMGH-TV
123 East Speer Boulevard
Denver, CO 80203

AFFIDAVIT OF WILLIAM ANDERSON

1. My name is William Anderson, and I am President and General Manager of the broadcast television stations licensed to LIN of New Mexico, LLC and LIN of Colorado, LLC in the Albuquerque-Santa Fe DMA.
2. I have read the foregoing Opposition and attest that any factual statements contained therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2016.



William Anderson
President and General Manager